

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

ADAM S. LEVY on behalf of himself and all others
similarly situated,

Plaintiff,

v.

THOMAS GUTIERREZ, RICHARD J. GAYNOR,
RAJA BAL, J. MICHAL CONAWAY, KATHLEEN A.
COTE, ERNEST L. GODSHALK, MATTHEW E.
MASSENGILL, MARY PETROVICH, ROBERT E.
SWITZ, NOEL G. WATSON, THOMAS WROE, JR.,
MORGAN STANLEY & CO. LLC, GOLDMAN,
SACHS & CO., AND CANACCORD GENUITY INC.,
AND APPLE, INC.

Defendants.

No. 1:14-cv-00443-JL

ECF CASE

**[PROPOSED] ORDER APPROVING SECOND DISTRIBUTION OF EARLIER
SETTLEMENTS AND APPLE SETTLEMENT DISTRIBUTION PLAN**

Lead Plaintiff moved this Court for an order approving a distribution plan for the Net Settlement Funds in the above-captioned class action (the “Action”). Having reviewed and considered all the materials and arguments submitted in support of the motion, including the Memorandum in Support of Lead Plaintiff’s Unopposed Motion for Approval of Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan and the Declaration of Stephanie Amin-Giwner in Support of Lead Plaintiff’s Unopposed Motion for Approval of Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan (the “Amin-Giwner Declaration”),

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement with Defendant Apple Inc. dated as of January 10, 2020 (ECF No. 252-1) (the “Apple

Stipulation”), and the Amin-Giwner Declaration, and all terms used in this Order shall have the same meanings as defined in the Apple Stipulation or in the Amin-Giwner Declaration.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Apple Class Members and Settlement Class Members of the Earlier Settlements.

3. Lead Plaintiff’s plan for distribution of the Net Settlement Funds to Authorized Claimants is **APPROVED**. Accordingly:

(a) The administrative recommendations of the Court-approved Claims Administrator, Epiq Class Action and Claims Solutions, Inc. (“Epiq”), to accept the Timely Eligible Claims to the Apple Settlement, as stated in Exhibit D to the Amin-Giwner Declaration, the Late But Otherwise Eligible Claims to the Apple Settlement, as stated in Exhibit E to the Amin-Giwner Declaration, and the Late Adjusted Claims submitted in connection with the Earlier Settlements, as stated in Exhibit F to the Amin-Giwner Declaration, are adopted;

(b) The Claims Administrator’s administrative recommendations for the Rejected Claims as wholly ineligible Claims to the Apple Settlement, as stated in Exhibit G to the Amin-Giwner Declaration, are adopted;

(c) Epiq is directed to conduct the Settlements Distribution, which shall consist of the Earlier Settlements Second Distribution together with the Apple Initial Distribution, after deducting all payments previously allowed and the payments approved by this Order, and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, while maintaining a 5% reserve from the Apple Net Settlement Fund to address any tax liability and claims administration-related contingencies that may

arise in the Apple Initial Distribution. Specifically, as stated in paragraph 47(a) of the Amin-Giwner Declaration: (1) Epiq will calculate each Authorized Claimant's: (a) *pro rata* share of the Individual Defendant Net Settlement Fund based on the amount of the Authorized Claimant's Exchange Act Recognized Claim in comparison to the total Exchange Act Recognized Claims of all Authorized Claimants; (b) *pro rata* share of the Underwriter Defendant Net Settlement Fund based on the amount of the Authorized Claimant's Securities Act Recognized Claim in comparison to the total Securities Act Recognized Claims of all Authorized Claimants; and (c) *pro rata* share of the Apple Net Settlement Fund based on the amount of the Authorized Claimant's Exchange Act Recognized Claim in comparison to the total Exchange Act Recognized Claims of all Authorized Claimants; (2) Epiq will eliminate from the Settlements Distribution any Authorized Claimant whose combined *pro rata* shares of the Individual Defendant Net Settlement Fund, Underwriter Defendant Net Settlement Fund, and Apple Net Settlement Fund calculate to less than \$10.00, as these Claimants will not receive any payment from the Net Settlement Funds and will be so notified by Epiq; (3) After eliminating Claimants who would have received less than \$10.00 from the Net Settlement Funds, Epiq will recalculate the *pro rata* shares of the Individual Defendant Net Settlement Fund, the Underwriter Defendant Net Settlement Fund, and the Apple Net Settlement Fund for all Authorized Claimants who would have received \$10.00 or more based on the amount of the Authorized Claimant's Recognized Claim to each Net Settlement Fund in comparison to the total Recognized Claims for all Authorized Claimants to each Net Settlement Fund who would have received \$10.00 or more in the previous calculations. The sum of these *pro rata* shares is the Authorized Claimant's "Distribution Amount"; (4) Authorized Claimants whose Distribution Amount calculates to less than \$100.00 will be

paid their full Distribution Amount (“Claims Paid in Full”). These Authorized Claimants will receive no additional funds from the Net Settlement Fund in subsequent distributions; (5) After deducting the payments to the Claims Paid in Full, 95% of the remaining balance of the Apple Net Settlement Fund and 100% of the remaining balance of each Earlier Settlements Net Settlement Fund will be distributed *pro rata* to Authorized Claimants whose Distribution Amount calculates to \$100.00 or more. The remaining 5% of the Apple Net Settlement Fund will be held in reserve (the “Reserve”) to address any tax liability and claims administration-related contingencies that may arise. To the extent the Reserve is not depleted, the remainder will be distributed in the Second Settlements Distribution described in subparagraph (h) below;

(d) In order to encourage Authorized Claimants to cash their checks promptly, all distribution checks will bear the following notation: “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE].” Lead Counsel and Epiq are authorized to take appropriate action to locate and contact any Authorized Claimant who has not cashed his, her, or its distribution check within said time as detailed in paragraph 47(b) footnote 13 of the Amin-Giwner Declaration;

(e) Authorized Claimants who do not cash their distribution checks within the time allotted or on the conditions stated in paragraph 47(b) footnote 13 of the Amin-Giwner Declaration will irrevocably forfeit all recovery from the Settlements, and the funds allocated to all such stale-dated checks will be available to be redistributed to other Authorized Claimants in a subsequent distribution;

(f) After Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their distribution checks, as provided in paragraph 47(b) footnote 13 of the

Amin-Giwner Declaration, but not earlier than nine (9) months after the Settlements Distribution, Epiq will, after consulting with Lead Counsel, conduct an additional distribution of the Net Settlement Funds (the “Second Settlements Distribution”). Any amounts remaining in the Net Settlement Funds after the Settlements Distribution, including from the Reserve and the funds from all void stale-dated checks, after deducting Epiq’s fees and expenses incurred in connection with administering the Settlements for which it has not yet been paid, including Epiq’s estimated costs of the Second Settlements Distribution, and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to all Authorized Claimants in the Settlements Distribution who cashed their distribution check and who would receive at least \$10.00 from such distribution based on their *pro rata* share of the remaining funds;

(g) No new Claims may be accepted after January 22, 2021, and no further adjustments to Claims received on or before January 22, 2021, that would result in an increased Recognized Claim amount may be made for any reason after May 4, 2021, subject to the following exception: At such time as Lead Counsel, in consultation with Epiq, determines that further distribution of the funds remaining in the Net Settlement Funds is not cost-effective, and after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Funds and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, if sufficient funds remain to warrant the processing of Claims received after January 22, 2021, such Claims will be processed, and any such Claims that are otherwise valid as well as any earlier received Claims for which an adjustment was received after May 4, 2021, and which resulted in an increased Recognized Claim, at the discretion of Lead Counsel, may be paid the distribution

amounts or additional distribution amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks to the extent possible;

(h) If Lead Counsel, in consultation with Epiq, determines that a further distribution of the Net Settlement Funds is cost-effective, Epiq will conduct a “Third Settlements Distribution” of remaining funds in the Net Settlement Funds. Additional re-distributions from the Net Settlement Funds to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 from such additional re-distributions may occur thereafter in six-month intervals if Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlements, including for such re-distributions, would be cost-effective;

(i) When Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions are not cost-effective, if any funds remain in the Net Settlement Funds after payment of the late or late-adjusted Claims, the remaining balance of the Net Settlement Funds, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Funds and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to the National Consumer Law Center (“NCLC”);

(j) The Court finds that the administration of the Settlements and the proposed distributions of the Net Settlement Funds comply with the terms of the Stipulations and the Plan of Allocation approved by this Court and that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims

submitted, or who are otherwise involved in the administration or taxation of the Settlements, are hereby released and discharged from any and all claims arising out of that involvement, and all Apple Class Members, Settlement Class Members of the Earlier Settlements, and other Claimants, whether or not they receive payment from the Net Settlement Funds, are hereby barred from making any further claims against the Net Settlement Funds, Lead Plaintiff, Lead Counsel, the Claims Administrator, the Escrow Agent, or any other agent retained by Lead Plaintiff or Lead Counsel in connection with the administration or taxation of the Settlement Funds or the Net Settlement Funds, or any other person released under the Settlements beyond the amounts allocated to Authorized Claimants;

(k) All of Epiq's fees and expenses incurred in the administration of the Settlements and estimated to be incurred in connection with the Settlements Distribution as stated in the invoices attached as Exhibit H to the Amin-Giwner Declaration are approved, and Lead Counsel is directed to pay the outstanding balance of \$535,627.06 out of the Settlement Funds to Epiq; and

(l) Unless otherwise ordered by the Court, Epiq may destroy the paper copies of the Claims submitted for the Apple Settlement and all supporting documentation one year after the Settlements Distribution and may destroy electronic copies of the same one year after all funds have been distributed.

4. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlements, and any other and further relief that this Court deems appropriate.

SO ORDERED this ___ day of _____ 2021.

The Honorable Joseph N. Laplante
United States District Judge